

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WAYNE BROWN,	§
	§ No. 359, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0903017370
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 7, 2010

Decided: January 3, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

**ORDER**

This third day of January 2011, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In February 2010, the appellant, Wayne Brown, was found guilty by a Superior Court jury of six counts of Rape in the First Degree and one count each of Kidnapping in the First Degree, Assault in the Third Degree and Criminal Impersonation. Following trial, the parties agreed that the six counts of Rape merged into three counts for purposes of sentencing. Brown was sentenced to a total of fifty-six years at Level V, to be suspended after forty-seven years for decreasing levels of supervision. At trial, the

State presented evidence that, in March 2009, Brown attacked a woman in a crack house and raped her. The victim testified about the attack at trial. The physician who examined the victim testified that she showed signs of strangulation. DNA evidence also connected Brown to the crime. This is Brown's direct appeal.

(2) Brown's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that arguably could support the appeal; and b) the Court must conduct its own review of the record in order to determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>1</sup>

(3) Brown's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Brown's counsel informed Brown of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Brown

---

<sup>1</sup> *Person v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

also was informed of his right to supplement his attorney's presentation. Brown has chosen not to provide any points for consideration by this Court. The State has responded to the position taken by Brown's counsel and has moved to affirm the Superior Court's judgment.

(4) The Court has reviewed the record carefully and has concluded that Brown's appeal is wholly without merit and devoid of any arguably appealable issues. We also are satisfied that Brown's counsel has made a conscientious effort to examine the record and the law and has properly determined that Brown could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Randy J. Holland  
Justice